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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE M. JAICHANDREN

L.P.A.NO.27 OF 2002

AL.KR.AL.Karuppiah @ Muthu .. Appellant/Defendant

Vs.

1. KR. Nachammai @ Kamala

2. Minor Alagappan @ Ayyappa
rep. by mother and guardian
KR. Nachammai, the 1st
Respondent herein. .. Respondents/Plaintiff

Appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge in A.S.No.1074 of 1988 dated 20.3.2001. (O.S.No.61/1985 dated 24/12/86 on the file of the Court of the Subiordinate Judge, Devakottai)

For Appellant : AR.L. Sundaresan
Senior Advocate for
Ms.AL. Gandhimathi

For Respondent : No Appearance

- - -

J U D G M E N T

(Judgment of the Court was made by M. JAICHANDREN, J)

Defendant is the appellant against the confirming judgment. Plaintiffs / Respondents filed O.S.No.61 of 1985 for directing the present appellant (Defendant) to deliver all jewels and items described in Schedules A and B, in default to pay a sum of Rs.61,280/- as the market value of such movable properties with interest at 9% per annum from the date of the suit till realisation and for declaration that the amount in Indian Bank, Karaikudi in Fixed Deposit Receipt No.78/FD/C.587517 and in Indian Overseas Bank, Attangudi in Fixed Deposit Receipt No.293675, belongs to Plaintiff No.1 exclusively as Sridhanam amount, and that she is entitled to realise the same from the said Banks, and for arrears maintenance of Rs.21,600/- for three years at the rate of Rs.400/- and

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Rs.200/- per month, respectively.

2. The case of the plaintiffs is as follows :-

The marriage between the first plaintiff and the defendant was celebrated on 14.5.1973, and the second plaintiff is their only son. The defendant is the maternal uncle of the first plaintiff. He had been adopted by his mother's eldest sister. After the marriage, the first plaintiff and the defendant were living in the adopted mother's house at Athangudi. Since the defendant was compelling the first plaintiff to persuade the adoptive mother-in-law to part with considerable amounts of money, the first plaintiff contacted her own father, who in turn sought intervention and mediation of 'Pangalis' of the respondent's adoptive mother's family. On intervention of close relations, the adoptive mother was advised to give Rs.19,000/-, which was received and acknowledged by the defendant. It has been stated that the defendant's natural father had presented Rs.10,501/- as Sridhanam, besides other valuables, as per the caste custom, to the first plaintiff and as per the custom of Nattukottai Chettiar community the amount has been invested in a joint deposit in the name of of the defendant and his wife. Subsequently, the defendant had got an employment in a coffee estate and the plaintiffs had joined him at Coorg and at that time, as per the advise, the jewelleries of the first plaintiff were taken by the defendant for being kept in a locker under safe custody. Thereafter, the defendant had insisted that the first plaintiff should bring back certain gold ornaments and to give them to the defendant. The defendant had also insisted that the fixed deposit amount should also be handed over to him. Accordingly, the first plaintiff had to comply with the directions of her husband. Subsequently, the differences between the two grew and the defendant had deserted the first plaintiff.

It has been further stated that the defendant, at that stage, had filed O.P.No.9/80 seeking for divorce and the same had been dismissed. However, the defendant had married another girl. On the basis of these allegations, the plaintiffs sought for maintenance and also for return of the jewelleries and other movable properties described in A and B schedules, including the money.

The defendant had filed a written statement denying the allegations. He had also denied the taking of the jewelleries.

3. Based on the pleadings of the parties concerned, the trial court had framed the following issues:-

"1. Whether the sreedhana property exclusively belonged to the first plaintiff ?

2. Whether 'A' and 'B' schedule properties were given to the first plaintiff by her father who is exclusively entitled to these items ?

3. Whether the defendant is entitled to any of the items in 'A' schedule jewellery ?

4. Whether the said jewellery and plaint items are in

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possession of the defendant ?

5. Whether the first defendant is a trustee is custody of the jewellery ?

6. Whether the plaintiffs are entitled to maintenance ? If so to what amount ?

7. To what relief the plaintiffs are entitled to ?

4. Issues No.1 and 2 were found in favour of the plaintiffs and against the defendant by the trial court.

Similarly, Issues No. 3 to 5 were answered in favour of the plaintiffs and against the defendant. However, with regard to Issue No.6, the trial court had granted maintenance of Rs.200/-, and had passed a decree for Rs.7,200/-, towards arrears of maintenance. Regarding Issue No.7, the trial court had granted a decree for some of the jewellery in 'A' schedule, namely, gold chain, gold bangles and diamond studded ear rings, diamond ring as well as for the entire 'C' schedule deposits lying in the Banks. Accordingly, the suit was decreed in part. Aggrieved against the decree, the defendant had filed A.S.No.1074 of 1988, and no appeal or cross-objection had been filed by the plaintiffs in respect of the relief refused or partly refused by the trial court.

5.During the hearing of the appeal before the learned single Judge, the defendant / appellant had challenged the directions in respect of the jewels as detailed in the decree and the direction to pay the market value of such jewels with 9% interest.

6. On the basis of the contentions raised , the learned single Judge had framed the following questions for consideration :-

(1) Whether the plaintiff is entitled to recover all the jewels or the value of the items as decreed by the Court below ?

(2) Whether the jewellery as found by the court below were entrusted by the first plaintiff to the defendant ?

(3) To what relief the appellant is entitled to in this appeal ?

The learned single Judge had confirmed the judgment and decree of the trial court. Hence, the present appeal has been filed against the decision of the learned single Judge.

7. The only question to be answered is whether the courts below were correct in directing the return of the jewelleries as described in the 'A' schedule or the money value thereof?.

8. The learned Senior Counsel appearing for the appellant has contended that the jewels in question were initially in the custody of the appellant's adoptive mother Visalakshi Achi. However, when the first respondent's father had insisted on the return of the jewels, as the appellant was not well settled in life and that there was likelihood of misuse of the jewels, a Panchayat was held and all the jewels, which were

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presented to the first respondent, were kept in a steel almirah in the plaintiff's father's house in the presence of one AP.Natesan Chettiar and the keys of the almirah were left with the said AP.Natesan Chettiar. Thereafter, the appellant did not have any access to the jewels nor did he have possession of the same at any point of time. Therefore, the plea of the first respondent that the jewels were entrusted with the appellant and that he is liable to return the same cannot be true.

9. It has been further pointed out on behalf of the appellant that the first respondent had not proved the entrustment of the jewellery with the appellant. There is no concrete evidence to prove such entrustment. The trial court as well as the learned single Judge of this Court had relied on the letter, dated 25.12.1975, marked as Exhibit A-1, written by the appellant from Murugan Estate, Perambavur, State of Kerala, in which it has been stated as follows :-

> "We have also kept the jewels, made at the time of adoption, in the locker"

Except for the said sentence in Exhibit A-1, there is no other material evidence in support of the first respondent's claim. It has been explained on behalf of the appellant that the said letter refers only to the jewellery given to him at the time of his adoption and nothing else.

10. It was also pointed out that the first respondent had examined herself as P.W.1, her maternal grandmother Sivakami Achi was examined as P.W.2 and her father Nagappa Chettiar was examined as P.W.3. In the course of their evidence, it was admitted that they had demanded for the jewels from the appellant and that there was a panchayat held to resolve the dispute. It had also been admitted that pursuant to the said panchayat, the jewels in question were kept in the steel almirah in the first respondent's father's house. It has been further stated that P.W.2, the grandmother of the first respondent has also admitted that the jewels were kept in the almirah by the panchyatdars. However, it was stated that, subsequently, the appellant had been asking for the jewels and the key of the almirah was given to him and that he had taken away the jewels. P.W.3 had deposed that at the time of the panchayat, he was present and the jewels had come to his house only according to the conditions specified by the panchyatdars.

11. The learned senior counsel appearing on behalf of the appellant had submitted that the evidence of the first respondent and her witnesses are wholly unreliable as it has been admitted that difference of opinion had cropped up between the families, due to which the panchayat had taken place and it had also been admitted that pursuant to the panchayat, the jewels were kept in the steel almirah in the first respondent's house and the keys thereof were given to one AP.Natesan Chettiar. The first respondent and her witnesses have not stated at any point of time that the almirah was opened in the presence of the panchyatdars and that the jewelleries were handed over to the appellant. Therefore, it cannot be said that there was entrustment of the jewels with

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the appellant. Therefore, the first respondent had not made out a case to show that the jewels were given to the appellant at any point of time.

12. On a perusal of the records available and on analysing the contentions put forth on behalf of the appellant, it is clear that the jewels in question could not have been taken away by the appellant from the custody of the first respondent or her parents. From the evidence on record, it is seen that only in accordance with the decision of the panchayat, the jewels were kept in the almirah of the first respondent's fathers house. Further, there is no evidence to show as to how and under what circumstances, the appellant could have taken the jewels from the almirah which was in the house of the first respondent's father. Exhibit-A-1, which is a letter, dated 25.12.1975, written by the appellant seems to be the only evidence, which has been relied upon by the first respondent to show that the jewels in question were with the appellant. However, the language used in the said letter, dated 25.12.1975 , cannot be taken as sufficient evidence to prove that the jewels were with the appellant at that point of time. The language used in Exhibit A-1, by the appellant cannot be interpreted only to mean that the jewels were in his custody at the time the letter was written.

13. In such circumstances, we are of the considered view that both the findings of the trial Court as well as the decision of the learned single Judge of this Court with regard to the return of the jewelleries by the appellant to the respondents, cannot be sustained. However,the conclusions arrived at by the trial Court, in O.S.No.61 of 1985, as well as by the learned Single Judge of this Court, in A.S.No.1074 of 1988, would stand confiermed with regard to the other aspects dealt with therein. Accordingly, the present appeal stands partly allowed. No costs.

dpk/ssm

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge, Devakottai.

2. The Chief Posting Cleark,Posting Section,
   Judicial Department, High Court, Madras.

3. The Record-keeper, V.R. Section, High Court, Madras.

+1 cc to Ms.Al.Ganthimathi, Advocate Sr.No.24540.
JRG(CO)
DCP/18.6.07 LPA.NO.27/2002

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